from them, and there we find that the common or unwritten law is so called to distinguish it from statute law—and this is the broad line laid down by Virginia herself in a late declaration of her legislature drawn up by one of the greatest statesman that ever that or any other country produced. They declare that the United States government has no common law jurisdiction. All their powers must be exercised in virtue of some statute made under the conditions of the constitution. In casting our eyes over the constitution we shall not find a syllable of the words common law; the first time it appears, it is in the 7th amendment relating to debts exceeding 20 dollars.

The judiciary bill refers to the civil jurisdiction of those courts in cases between foreigners and citizens, but there is no where to be found a word that gives to the United States criminal jurisdiction at common law. Mr. Chase held this opinion himself, as you hear from the affidavit of Mr. Read, who observing the attack upon judge Chase in the Wilmington Mirror, reminded him that the sedition act did not protect the judges from libel; they had no cognizance thereof and it could not be punished but through the state courts. Even in England they paid respect to this distinction. The first trial of Rinewick Williams, commonly called the monster, for his abominable wickedness in cutting women as they past him in the street; he was indicted under a particular statute, judgment was successfully arrested, though he was afterwards indicted at common law for assault and battery and convicted.

To make the allegation conform to the principles, it should be said that Callender was tried by the common law; where was the authority at common law? Callender's was not a civil case, between a citizen of another state and himself—No, it was a criminal case, under a particular statute, and he was tried by the statute law, not by the common law. He was confirmed in this opinion by the report of the case, where it appears that such eminent men as Mr. Hay and Mr. Nicholas, preferred to rely upon an affidavit for a postponement, rather than bring forward the statute of Virginia alleged to be decisive; they would hardly leave their client in the discretion of the court, when they had the strong language of the law, that they should not try the cause at that term; their talents and vigilance forbid us for a moment to entertain the idea, that the matter had escaped their notice or recollection.

These are the principal reasons which induce me to vote against the sixth article now under our consideration.

Mr. *J. Randolph* said if he agreed in the construction which his friend from Delaware contended for he would not be the last man to join him against the article. He would not support any act that would tend to sustain the pretension that Congress have criminal jurisdiction in common law cases. If this construction could in any wise be put on this article, he here entered his protest against it, as well as against the doctrine itself. One of the first acts of the general government was to establish judicial courts on the part of the United States, and let it be recollected that beside the great national power vested in the courts by the constitution, there were others vested in them of a peculiar nature. Their authority extended to cases between a state and citizens of another state, between citizens of different states, and foreign states, citizens or subjects. It was enacted that the *laws of the several states*, except where the constitution, treaties, or statutes of the United States shall otherwise require, shall be regarded as the rules of decision in trials at common law. It has always been held as a sound rule of construction that all the words ought to have efficacy, and when this law of the United States, gave life and vital spirit to the law of Virginia, it provided that in all cases at common law, the rule of the state should govern, but in cases under a statute where rules of decision are otherwise provided, the law of the state shall not govern. Congress saw in the outset the necessity of carrying into effect that great constitutional power of establishing courts and regulating their mode of procedure. Instead however, of establishing any mode of their own, they adopted the modes already existing in the several states, and there is no other mode except in cases of admiralty and maritime jurisdiction; if the laws of the state where the offence has been committed, does not apply, what possible rule of procedure or decision could govern the court? In what manner is a criminal trial to be conducted? The 34th section under any other construction becomes absurd and nugatory. He did believe that by the 33rd and 34th sections of the act establishing the judicial courts, the laws of the several states have been adopted by Congress in criminal as well as in civil cases.

But the gentleman from Delaware asks us how we can believe this to be the just construction, when the able counsel assigned to the defence in this case failed to produce this law to the court which would have procured them the direct attainment of their end, without applying to the discretion of the court? To this he answered he could not tell why they omitted to bring forward this objection. This was not his concern. It might perhaps have escaped their memory. But will it be an objection that because they failed, we also should fail who think this law has been violated. That the law of Virginia was the rule of conduct adopted in this case is proved by every preliminary as well as subsequent step. If then they did not make this exposition of the law of the United States, why was the trial in all other parts conducted consonant with the laws of Virginia. He stated the case in another point of view; although there is no common law jurisdiction of the United States in criminal cases, yet there is in each state a peculiar common law generally drawn from England, but varied so as to suit their purposes. Suppose Virginia had never modified the common law of England, as it relates to the law of descents, and suppose a claim brought in the United States court by a citizen of North Carolina for a tract of land in Virginia (it will be admitted that Congress can make no law in relation to descents). How is the court to be governed by the law of descents in North Carolina, or by that of Virginia or by the common law of England. Certainly they must conform their decision to the rule of Virginia where the land lies. Take this common law doctrine then in any other sense than as being in contradistinction to our admiralty and maritime code, and it has no basis, for common law jurisdiction, Congress have none in criminal cases; as all such cases must be constituted crimes by a statute of Congress, previous to their perpetration, and a statute or written law is the opposite of common, which is an unwritten law made up of usages time immemorial. If it was established that this article tended in any shape to establish the exploded doctrine that the United States had common law jurisdiction in criminal cases, he would readily vote against the article.

Mr. *Nicholson* entertained no doubt but the term of common law expressed in the statute establishing the courts of the United States was used as a term of definition, and that it ought not to be construed to give the courts any additional jurisdiction, nor to abridge them of any they possessed. He observed in other parts of the law that the words common law are used to distinguish that mode of procedure from what was used in our courts of admiralty. In England they had three distinct courts, governed by three distinct modes of proceeding under three laws. The common law courts, or the courts at Westminster, and the chancery court, are governed by the common law. The admiralty courts are governed by the civil law, and the ecclesiastical courts by the ecclesiastical law. But all and every one of these are governed by the statute law—But in their mode of proceeding, each has its own peculiar rules, yet they all are bound to conform to a statute, as if a statute had originally give them jurisdiction. In our own courts, he believed, it would be difficult to conduct trials without some provision as to the mode. Bills of exchange and promissory notes were not made current till the time of queen Anne. The suit on these actions is still at common law, though the remedy is given by statute. So when an indictment is made upon a statute, it must be tried by the rules of the common law, as was the case mentioned in the article. And with the gentleman from Virginia, he asked in what manner a criminal can be prosecuted but by the rules of the common law, unless you have him to be tried by such arbitrary ones as the court may make at the time, in order to suit their own purpose. If it be true that we have no rules of proceeding established for our courts of justice, it is high time to set about making them. But the fact is, that rules are established, and the reason why they were established, in the manner they are, is that in this way Congress expected, and justly too, that they would give more satisfaction to their constituents to leave them to the rules of proceeding they had long been accustomed to, than they would by introducing a novel set of their own contriving. And he sat down fully convinced that the circuit court was bound to proceed thro' the whole case by the rules established by the laws of Virginia.

The sixth article was agreed to. The yeas were seventy three, and nays forty two, as follow:

YEAS—Messrs. Anderson, Archer, Bard, Bedinger, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, J. Clay, M. Clay, Conrad, Crowninshield, Cutts, Dawson, Dickson, Earle, Early, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Hollend, Holmes, Jones, Kennedy, Knight, Larned, Leib, Lucas, Lyon, M'Cord, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson, New, Newton, Nicholson, Olin, Palmer, J. Randolph, T. M. Randolph, J. Rea (of Pennsylvania) J. Rhea (of Tennessee) Riker, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Willson, Winn, Winston, Wynns. 73.

NAYS—Messrs. Alston, Baldwin, Betton, J. Campbell, Chamberlin, Chittenden, Clagett, Clark, Cutler, Dana, Davenport, Dwight, Elliot, Elmer, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes. M'Creery. Mitchell, Mott, Plater, Purviance, Rodney, Root, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, Wadsworth, Williams. 42.

The seventh article was agreed to—The yeas and nays were as follow:

YEAS—Messrs. Alston, jun. Anderson, Archer, Bard, Bedinger, Boyd, Boyle, Brown, Butler, Casey, Claiborne, Clark, M. Clay, Conrad, Crowninshield, Dawson, Dickson, Earle, Early, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Kennedy, Knight, Larned, Leib, Lucas, M'Cord, M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, J. Randolph, T. M. Randolph, J. Rea (of Pennsylvania) J. Rhea (of Tennessee) Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Wilson, Winn, Winston, Wynns. 73.

NAYS—Messrs. Baldwin, Betton, Blackledge, G. W. Campbell, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliott, Elmer, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Lewis, jun. Livingston, Lowndes, Mitchell, Mott, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, Wadsworth, Williams. 38.

The eighth article was divided—The yeas and nays on the first paragraph were as follow:

YEAS—Messrs. Anderson, Archer, Bedinger, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Dawson, Dickson, Early, Elmer, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Knight, Larned, Leib, Lucas, Lyon, M'Cord, M'Creery, Meriwether, N. R. Moore, T. Moore, Morrow, Nelson, New, Newton, jun. Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M. Randolph J. Rea, (of Penn.) J. Rhea, (Ten.) Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Trigg, Van Horne, Varnum, Whitehill, Wilson, Winn, Winnston, and Wynns—74.

NAYS—Messrs. Alston, jun. Baldwin, Betton, Blackledge, J. Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Earle, Elliot, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hough, Hunt, Kennedy, Lewis, jun. Livingston, Mitchell, Mott, Plater, Purviance, J. C. Smith, J. Smith, Stedman, Stevenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, Wadsworth, and Williams—38.

The second paragraph of the eighth article was agreed to, Yeas and Nays as follow:

YEAS—Messrs. Alston, jun. Anderson, Archer, Bedinger, Blackledge, Boyd, Boyle, Brown, Bryan, Butler, Casey, Claiborne, Clark, J. Clay, M. Clay, Conrad, Crowninshield, Dawson, Dickson, Earle, Early, Elmer, Eppes, Findley, Gillespie, Goodwyn, Gray, Gregg, Hasbrouck, Heister, Holland, Holmes, Jackson, Kennedy, Knight, Larned, Leib, Lucas, Lyon, M'Cord, M'Creery, Merriwether, N. R. Moore, T. Moore, Morrow, Nelson, New, Newton, junior, Nicholson, Olin, Palmer, Patterson, J. Randolph, T. M. Randolph, J. Rea (of Penn.) J. Rhea, (of Ten.) Riker, Rodney, Root, Sammons, Sandford, Seaver, Sloan, Smilie, Southard, Stanford, Stanton, Stewart, Thomas, Thompson, Van Horne, Varnum, Whitehill, Williams, Wilson, Winn, Winnston, and Wynns—78.

NAYS—Messrs. Baldwin, Betton, Campbell, Chamberlin, Chittenden, Clagett, Cutler, Dana, Davenport, Dwight, Elliot, Goddard, Griffin, G. Griswold, R. Griswold, Hastings, Hunt, Lewis, jun. Livingston, Mitchell, Mott, Plater, J. C. Smith, J. Smith, Stedman, Stephenson, Taggart, Tallmage, Tenney, Thatcher, Tibbits, and Wadsworth—32.

FRIDAY, December 7.

Dr. *Leib* moved that the committee of Commerce and Manufactures be instructed to enquire into the expediency of so far amending the impost and tonnage act as to allow the collector of the port of Philadelphia an additional deputy, and that they be authorised to report by bill or otherwise.

A petition from William A. Barron of the corps of engineers, praying a further allowance for his expenses in the military academy.

Referred to the committee of Claims.

Mr. *Thomas* said, he rose with a view to propose an enquiry relative to the duty on salt—On this article a duty of six cents per bushel was first laid, in the year 1790 it was raised to twelve cents, and in the year 1797 eight cents more were added, making the duty twenty cents per bushel of 56lbs, at which rate it now stands—But, as every measured bushel of good strong salt which is imported into this country, will weigh 80 or 90 lbs, this is in reality a duty of about 30 cents per bushel.

Three years ago, when the repeal of the Stamp Act, excise and other internal tax laws, were before Congress, an attempt was made to reduce the duty on salt, and retain a part of that system.

At that time, although he was conscious the duty on this article of real necessary consumption was too high, and fell extremely heavy on the agricultural part of the community, particularly those living back from the sea-board, who were obliged to use large quantities of it, for their black cattle and other beasts of pasture, notwithstanding the increased price at which it came to them, in consequence of the transportation, and the profits charged on the amount of duty as well as original cost by the several merchants or traders through whose hands it passed, yet he did believe it better to allow this duty to remain as it was, a while longer, rather than not be enabled to abolish that expensive, inconvenient and anti-republican system of internal taxation.

And should it now be found, on due enquiry, that a reduction of the duty on this article, at this time, would be incompatible with the great object of paying off the national debt and meeting the other exegencies of government, for his part he would not urge it—But he was persuaded this was not the case—He believed our finances are amply sufficient to authorise the measure.

On examining the report of the secretary of the treasury he found, that besides meeting all the calls of government, including the sum appropriated annually towards the reduction of the public debt, there is a surplus of 4,882,225 dollars in the treasury, and although there are several payments to be made out of this sum, there will still be a large balance remaining.

It also appears, from a comparative view of the bonded duties of the present with former years, that there will be an increase of revenue coming into the treasury the ensuing year, and he believed there was no reasonable probability of any new causes for expenditure.

This being the case, he flattered himself, it would not be deemed unseasonable or improper to propose a reduction of the duty, on this article of necessary consumption at this time.

With this object, however, said Mr. Thomas, I wish to couple another which I consider of equal importance, as it respects the reputation of our beef, pork, fish, and butter, put up for exportation, as well as the health of our seaport towns, and seamen employed on foreign voyages

He said by the treasury accounts it appears that the aggregate amount of salt imported into the United States during the year, ending the 30th September last, was 3,858,195 bushels of 56 lbs each, of this about one fourth part or 868,355 were imported in foreign vessels—All this salt was brought from foreign places, and no part of the salt prepared from the briny waters near the Onondaga in New York, the various springs in the Western states, and the sea water at Cape Cod, Portsmouth, &c. are taken into this calculation.

Of this salt some parts came from the Swedish, Danish and Dutch West Indies—other parts were imported from the British West Indies, the other British colonies, from the French West Indies, from Spain, from Teneriffe, and the other Canaries, and the Spanish West-Indies—Parcels of the same sale were likewise brought from Portugal, Madeira, Cape de Verd Islands, and Italy, and about 20 000 bushels of a similar kind has heretofore annually been brought from Louisiana, which is now a part of the United States.

But notwithstanding all this trade in salt, to so many parts of the earth, the commerce in that article between the United States and Great Britain is very extensive and important—During the year he before mentioned, the proportion of imported salt which was furnished by England alone, and of the manufactory of that country, amounted to 1,271,537 bushels of 56lbs—So that it is evident at least one third of the salt consumed in our country is exported from that part of Great Britain called England, and chiefly from those countries of which Liverpool is the mart.

This salt, as he understood, was prepared by the process of boiling the brine of the rock salt from Coeshire, and the water of the sea—And on account of the great plenty and cheapness of coal in Lancashire, there being also as he believed, no export duty laid on it, this salt was produced in abundance and sold on very low terms—It is employed as ballast for British ships coming into our ports, and when arrived is sure to sell and pay freight and frequently afford a profit—Our own ships also very commonly take it in for ballast and often as part of the cargo.

This traffic would be perfectly fair and convenient if English salt was of a strength and quality fit to preserve animal flesh for provisions—But he was clearly of opinion, from his own knowledge, this was not the fact, and he had lately observed a discussion, on this subject in the British Parliament which confirmed that opinion.

The British government long ago made a distinction between English salt and foreign salt on their importation into Ireland—To encourage the introduction of salt from the Bay of Biscay and the Portuguese dominions, they permitted it to be imported into that kingdom at the rate of 84 lbs the bushel, while Liverpool salt was charged with the same duty of two shillings on the bushel of 56 lbs—the reason of this distinction was undoubtedly wise and cogent, experience had proved that British salt, as brought to the market, was destitute of that purity and strength which was necessary to preserve animal flesh from taint and corruption, and fit for human food in hot climates and on long voyages.

The trade of Ireland in beef, pork and butter, was of great importance, not only to that country itself but to the whole navy and army of Britain, to keep up the character and wholesomeness of their provisions was a matter of immense national importance, and this could only be done by attention to have it preserved with salt of purity and strength—Experience had proved that the salt formed by chrystalization in the open sunshine on the western shores and islands of Southern Europe, was vastly better, than that produced by artificial concretion, in a boiling heat over a fire in the north—And the government had with prudent discernment favored the introduction of Bay salt into Ireland, by permitting 84 lbs to be imported for the same duty that was paid on the introduction of 56 lbs of Liverpool salt.

The people of Liverpool have lately expressed uneasiness at this partiality, and an attempt has been made in parliament, so to equalize the duty, as to give to both Bay and English salt a fair competition in the Irish market. This, however, was repelled by the Irish members, with manly discernment and spirit; on the ground, that Bay salt was of a stronger quality, less easy to dissolve, and indispensible to the salters of meats—That English or Liverpool salt would not answer for this extensive and important branch of business—That the discrimination in favour of Bay salt was politic and proper, and especially connected with the provision trade and the health of the fleets and armies.

It is my wish, said Mr. T. that such a distinction should be made on the introduction of English salt into the United States, as has been made by the British laws themselves, on its importation into Ireland. There certainly exists the same causes for it. Like Ireland, our country abounds in provisions—beef, pork, fish and butter are great and stable articles of export; but their quality is very far inferior to the provisions of Ireland—The putrefaction of beef, pork and fish, to a very serious extent, has often occurred; the loss of property thereby was great, and the reputation of our provisions materially affected—But that was not the greatest evil—there is no doubt but that the exhalation from tainted and corrupted meats and fish in our towns as well as on board our vessels, poison the atmosphere and excite malignant fevers and other diseases.

His object was to retrieve and establish the reputation of our salted provisions in foreign markets—to prevent the loss of property by those who put up provisions for exportation, and also to prevent the evils resulting to our citizens and seamen from tainted and spoiling meats and fish. With this view of the subject he should propose in the first place, an enquiry into the expediency of reducing the duty on salt generally, and in the second, the propriety of making a distinction, so as to encourage the importation of strong and pure salt, in preference to the weak and impure salt manufactured in England.

He therefore moved the following resolution:

Resolved, That the Committee of Ways and Means be instructed to enquire into the expediency of reducing the duty on salt, and also into the propriety of making a distinction in the duty, so as to encourage the importations of salt from the dominions of Denmark, Sweden, the United Netherlands, Spain, France, Portugal and the British West-Indies in preference to that of any other place or places; and that they report thereon by bill or otherwise.

Mr. J. Randolph said that the resolution which the gentleman from New York had submitted, and in relation to which he had favored the House with such copious details, embraced two objects—the reduction of the duty on salt, generally—and the encouragement of the importation of a particular description of that article. The last subject belonging to a class which was consigned to the commitee of Commerce and Manufactures, he should confine himself to the first branch of the resolution: nor should he have troubled the house at all were not the motion of the gentleman from New York calculated to excite an expectation, which he wished to repress, because he feared it could not be gratified. It was not to oppose enquiry, but to apprize the mover and the public that the result was likely to prove unpropitious to his wishes, that he had risen.—The country on which the salt duty fell with peculiar force was that middle region, near enough to the sea board to be supplied altogether by importation, but